

**HB**

**86**





# REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON

ALASKA STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

"PROUD TO BE A MULDOONER"



## SPONSOR STATEMENT

### HOUSE BILL 86

#### THE FRIVOLOUS LAWSUIT PREVENTION ACT

**House Bill 86** will prevent frivolous lawsuits by requiring parties to a lawsuit and their attorneys to be truthful and responsible in their pleadings. This bill discourages false statements and claims in litigation and encourages responsibility by all parties and their attorneys. It requires more careful and focused preparation of pleadings.

This bill creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to assure those claims have a reasonable basis in fact and valid under existing law. If the claim is intentionally false, both the attorney and the party can be assessed damages. Currently, there is no *effective* way of holding parties responsible for frivolous pleadings or claims. Frivolous pleadings and claims increase the costs of litigation for all the parties involved in addition to escalating the cost of our judicial system.

House Bill 86 also provides that if a party makes an intentional, false statement of material fact, the court shall dismiss the claim to which the false claim relates.

Attorneys, as well as their clients, will be required to research their claims to assure they are factually supported before filing a lawsuit. This bill will eliminate "boiler plate" pleadings in lawsuits and encourages responsible and focused pleadings. "Boiler plate" pleadings include everything anyone could ever imagine could have happened rather than focusing on those specific issues that actually did occur. Those extraneous pleadings are expensive for innocent parties to litigate and work through and are most often thrown out. They simply cause one party, and the court system, to expend significant dollars to pare down to real issues.

Many suits are often less expensive to settle than to litigate, regardless of their merit. This bill does not affect suits filed in good faith. It will, however, deter those without merit. A system allowing deceit to be rewarded because it is more costly to litigate than to capitulate must be changed.

This bill assigns financial liability to those who:

- Sign a civil pleading with the intention of asserting allegations or defenses that are false.
- Initiate or sign a civil pleading without first determining that it has a reasonable basis in fact and law
- Continues a claim or defense after determining the claim or defense does not have a reasonable basis in fact and law

The basic purpose of HB86 is to preclude bad faith litigation by providing meaningful sanctions likely to be enforced if such conduct occurs, and at the same time provide effective remedies to parties who are injured by such conduct. Those who are trying to tell the truth will have nothing to fear from this provision, as it would only apply if the trier of fact finds a party has made an intentional, false statement of material fact.



# REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON  
ALASKA STATE LEGISLATURE  
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## SECTION BY SECTION ANALYSIS OF HB86

### Section 1

**Subsection (a)(1).** Prohibits a person from signing a civil pleading containing false allegations that are material with the intention of asserting claims or defenses that are false.

**Subsection (a)(2).** Prohibits a person from initiating or signing a civil pleading before making a reasonable inquiry and forming a reasonable belief in (A) the existence of the facts upon which the claim or defense is based and (B) under those facts the claim or defense is valid under applicable law.

**Subsection (a)(3).** Prohibits a person from participating in the continuation of a claim or defense after the person discovers the claim or defense is not supported by a reasonable basis in fact or is not valid under applicable law.

**Subsection (b).** Provides that the court shall dismiss a claim or defense made by a party who intentionally makes a false statement of material fact concerning the prosecution or defense of a civil action.

**Subsection (c).** Provides that if dismissal would be unfair to a person or party not involved in the wrongdoing, ie. a case involving policy issues affecting others, the court is to award monetary damages against the party making the false statement in an amount sufficient to compensate the injured party and to deter others from similar conduct.

**Subsection (d)(1).** Allows a party injured by a violation of paragraph (a)(1) to bring an action for compensatory and punitive damages against the person who signed the pleading.

**Subsection (d)(2).** Allows a party injured by paragraph (a)(2) to bring an action for compensatory damages against a person who wrongfully initiated or signed the pleading.

**Subsection (d)(3).** Allows a party injured by a violation of (a)(3) to bring an action for compensatory damages against the person who wrongfully participates in the continuation of a claim or defense.

Paragraphs (d)(2) and (d)(3) clarify that an action for violation can be brought only against the person who wrongfully initiated, signed or participated in the continuation of a claim or defense. These two paragraphs also limit the damages to compensatory damages only.

**Subsection (e).** Provides that the court shall award actual reasonable attorney's fees and actual reasonable costs to the prevailing party in any action brought under (d). This would serve two purposes.

First, the potential for such an award would ensure an action would be filed only with careful thought and consideration, because the unsuccessful party would have to pay the other party's actual costs and attorney's fee, which could be significant. Without this provision, this deterrent affect is lost.

Second, a party injured by irresponsible litigation conduct is not made whole unless they have the ability to recover the actual costs and attorney's fees they incur obtaining the relief created by this legislation. A person who successfully pursues an irresponsible litigant will bear most of that cost himself because, without this provision, the court will defer to existing Civil Rules which only awards a portion of the actual attorneys fees and costs to the prevailing party. Thus, without this provision, a party injured by irresponsible litigation is also much less likely to pursue the bad faith litigant.

**Subsection (f).** Provides that a civil action under (c) may not be brought unless:

- (1) Notice of the specific conduct with supporting evidence was served on the opposing party;
- (2) The challenged conduct was not appropriately corrected within twenty-one days of the notice;
- (3) The person prevailed on the claim or defense that was the basis for the notice; and
- (4) Final judgment has been entered.

**Subsection (g).** Provides that this bill should not be construed to prohibit a good faith argument for the extension, modification, or reversal of existing law.

**Subsection (h).** Excludes a number of categories of cases from the section for policy reasons.

**Subsection (i).** Defines a pleading as including motions and affidavits "by a party to the civil action". This definition limits the obligation of inquiry to determine a claim or defense has a reasonable basis in fact and law to those who have that responsibility, i.e. the attorneys and parties, instead of those who are involved merely because of their role as a witness.

### **Conclusion**

HB86 both narrows and clarifies conduct we seek to correct.

- It imposes an objectively reasonable obligation of inquiry to determine claims or defenses are reasonably based in fact, and are valid under applicable law.
- It further provides a claim or defense lacking a reasonable basis in fact, or is invalid under applicable law, may not be continued.
- It makes clear that to file a claim, a person must have given notice and prevailed on the issue that was the basis of the notice, thus removing the concern that an unsuccessful litigant will abuse this cause of action.
- It also makes clear such an action may not be filed until judgment is entered, thus removing the concern that this cause of action will create a trial within a trial.

This proposed legislation intends to be self-corrective to the extent possible through the notice and opportunity to cure provisions of Subsection (e).

Finally, this legislation provides a clear and definite sanction to those who intentionally make false statements of material fact. It does so without adversely affecting the interests of those not involved such wrongdoing.

APR 10 2001

**HB 86 – TRUTH IN SUING... TRUTH OR CONSEQUENCES**

- PROVIDES AN OBJECTIVE OBLIGATION TO DETERMINE CLAIMS OR DEFENSES ARE REASONABLY BASED IN FACT AND ARE VALID UNDER APPLICABLE LAW
- CLAIMS OR DEFENSES LACKING A REASONABLE BASIS IN FACT OR APPLICABLE LAW ARE INVALID AND MAY NOT BE CONTINUED
- HB86 ALSO PROVIDES THAT IF A PARTY MAKES AN INTENTIONAL, FALSE STATEMENT OF MATERIAL FACT, THEY LOSE ON THAT CLAIM. THIS PROVISION RECOGNIZES THE LEGAL PROCESS CANNOT BE FAIR WHEN PARTIES CHEAT... AND CHEATERS SHOULD FACE DEFINITE AND CERTAIN SANCTIONS
- HB86 IS A BALANCED BILL, AS THE OBLIGATIONS APPLY EQUALLY, WHETHER THE PARTICIPANT IS ON THE PLAINTIFF'S SIDE, OR THE DEFENDANT'S SIDE
- HB86 PROTECTS VICTIMS OF THOSE WHO ABUSE THE SYSTEM BY REQUIRING PARTIES TO HAVE A REASONABLE BASIS FOR THEIR CLAIMS AND DEFENSES AND BY PROVIDING FOR DEFINITE AND CERTAIN SANCTION FOR THOSE WHO LIE. THIS LEGISLATION GIVES VICTIMS OF SUCH CONDUCT A REAL REMEDY. THERE IS NO SUCH REMEDY NOW.
- HB86 UTILIZES THE STANDARD OF CONDUCT CONTAINED IN CIVIL RULE 11, BUT CHANGES THE MANNER IN WHICH THE STANDARD OF CONDUCT IS ENFORCED.
- CIVIL RULE 11 ESSENTIALLY REQUIRES ATTORNEYS TO CERTIFY THE CLAIMS THEY ARE ASSERTING HAVE BEEN INVESTIGATED AND THERE IS GOOD REASON TO BRING THEM. UNDER CV11, A JUDGE HAS DISCRETION TO IMPOSE A PENALTY ON AN ATTORNEY WHO VIOLATES THE STANDARD OF CONDUCT.
- HB86 GIVES THE POWER OF ENFORCEMENT OF THE RULE TO THE PERSON MOST LIKELY TO USE THAT POWER... THE PERSON INJURED BY THE ATTY'S MISCONDUCT
- UNDER CIVIL RULE 11, SOMEONE AGAINST WHOM FRIVOLOUS CLAIMS & ALLEGATIONS ARE ASSERTED, HAS NO WAY TO BE MADE WHOLE

- HB86 STATES A PERSON WHO FAILS TO DO THE REQUIRED INVESTIGATION OR ASSERTS A CLAIM OR ALLEGATION W/O BASIS COULD BE HELD RESPONSIBLE FOR DAMAGE CAUSED BY SUCH CONDUCT... INCLUDING REIMBURSING THE ACTUAL COST OF DEFENDING AGAINST A FRIVOLOUS CLAIM OR ALLEGATION.
- ANYONE WHO HAS BEEN INVOLVED IN A LAWSUIT KNOW THE FINANCIAL AND EMOTIONAL COST OF DEFENDING FRIVOLOUS CLAIMS.
- ONE OF THE MOST SIGNIFICANT BENEFITS OF THIS BILL IS THAT IT ENCOURAGES LAWYERS TO EXPLAIN THE CONSEQUENCES OF LYING TO EVERY CLIENT AND HOPEFULLY WOULD, AT THE OUTSET, LIMIT THOSE CLAIMS WHICH ARE FALSE OR EXAGGERATED.
- THOSE THAT ARE TRYING TO TELL THE TRUTH WILL HAVE NOTHING TO FEAR FROM THIS BILL. IT ONLY COMES INTO PLAY IF THE TRIER OF FACT FINDS A PARTY OR ATTORNEY HAS MADE AN INTENTIONAL, FALSE STATEMENT OF MATERIAL FACT OR INITIATED A LAWSUIT HAVING NO REASONABLE BASIS IN FACT OR LAW.
- SINCE THE BILL APPLIES TO ALL PARTIES, IT IS HARD TO SEE HOW ONE CAN ARGUE IT IS UNFAIR.
- TO THOSE WHO CLAIM THAT SUCH A CAUSE OF ACTION WOULD RESULT IN AN EXPLOSION OF SECONDARY LITIGATION, ONE ONLY NEED TO LOOK TO SUBSECTION (e), WHICH PROVIDES THAT ACTUAL REASONABLE ATTY FEES BE AWARDED TO THE PREVAILING PARTY IN SUCH AN ACTION. GIVEN SUCH SERIOUS CONSEQUENCES, I DOUBT VERY MUCH WHETHER SUCH CLAIMS WOULD BE MADE OFTEN OR MADE WITHOUT CONSIDERABLE THOUGHT.
- CERTAINLY, THIS BILL WILL RAISE THE LEVEL OF RESPONSIBILITY OF ATTYS, REGARDLESS OF WHICH SIDE THEY REPRESENT. IT IS DIFFICULT TO SEE HOW THIS WOULD NOT BENEFIT OUR CIVIL JUSTICE SYSTEM.
- BASIC PURPOSE OF HB86 GIVES INJURED PARTIES EFFECTIVE REMEDIES FOR BAD FAITH CIVIL LITIGATION
- IT GIVES VICTIMS OF UNSCRUPULOUS ATTYS AND THEIR CLIENTS THE ABILITY TO BE COMPENSATED IN CASES OF WHAT ORDINARY PEOPLE WILL CONSIDER TO BE OUTRAGEOUS CONDUCT.

- A SIGNIFICANT ASPECT OF THE BILL IS THAT IT EMPOWERS VICTIMS OF BAD FAITH CIVIL LITIGATION, NOT THE LEGAL COMMUNITY, TO BE RULE ENFORCERS.

TWO CONCEPTS THAT ARE UNIQUE IN HB86:

- THE EMPHASIS ON TRUTH... IT PROVIDES THAT IF A PARTY LIES TO FURTHER THEIR CLAIM OR DEFENSE, THEY LOSE. AT PRESENT, THERE IS NO SUCH EXISTING DISINCENTIVE IN OUR SYSTEM. THIS BILL WOULD CHANGE THAT, FOR THE CONSEQUENCES OF MAKING A FALSE STATEMENT WOULD BE PREDICTABLE, CERTAIN AND MEANINGFUL.
- THERE ARE PROVISIONS WHICH IMPOSE LIABILITY ON PARTIES AND/OR ATTYS WHO MISUSE THE LITIGATION PROCESS, RECKLESSLY OR KNOWINGLY FILE FALSE PLEADINGS OR SIGN PLEADINGS WITHOUT MAKING A REASONABLE INQUIRY AND DETERMINING THE CLAIMS ARE WARRANTED.

## Civil Rule 11 Notes

- Every pleading shall be signed by at least one atty of record or the party if not represented... is certifying to the best of the person's knowledge, information formed AFTER reasonable inquiry (1) is not being presented for any improper purpose, such as to harass or needless delay or cost of litigation and (2) are warranted by existing law, (3) and will have evidentiary support (4) and denials of factual contentions are warranted on evidence.
- If, after notice and a reasonable opportunity to respond, the court determines this has been violated, the court may impose a sanction upon the attys, law firms or parties
- The sanction is initiated through a motion or on the court's initiative
- A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. May consist of directives of non-monetary nature, an order to pay a penalty into court, or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees.
- Monetary sanctions may not be awarded against a represented party for a violation of (b)(2)... the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law
- Monetary sanctions may not be awarded on the court's initiative unless the court issue its order to show casual before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attys are, to be sanctioned.
- Under cr11, someone against whom frivolous claims & allegations are asserted has no way to be made whole.

### Notes of Advisory Committee on 1983 amendments to the Rules.

- Since its original promulgation, Rule 11 has provided of the striking of pleadings and the imposition of disciplinary sanction to check abuses.
- Experience show in practice, Rule 11 has not been effective in deterring abuses. There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action (2) the standard of conduct expected of attys who sign pleadings and motions (3) the range of available and appropriate sanctions.

## INSURANCE RESEARCH COUNCIL INFORMATION

- MORE THAN ONE-THIRD OF ALL BODILY INJURY INSURANCE CLAIMS ASSOCIATED WITH CAR CRASHES APPEAR TO INVOLVE SOME ELEMENT OF FRAUD
- A NEW STUDY SHOW THAT WHILE THREE OF EVERY 100 BODILY INJURY LIABILITY CLAIMS APPEAR TO BE BASED ON PREMEDITATED CRIMINAL ACTS SUCH AS STAGED ACCIDENTS, ANOTHER 33 OF EVERY 100 CLAIMS APPEAR TO INVOLVE OPPORTUNISTIC ACTS BY DOCTORS, LAWYERS AND/OR CLAIMANTS WHO TAKE ADVANTAGE OF ACCIDENTS TO CHEAT THE SYSTEM
- AUTO INSURANCE POLICYHOLDERS COUNTRYWIDE PAY THE TAB FOR THESE CONTINUING SCAMS IN THE FORM OF EVER HIGHER INSURANCE PREMIUMS
- 17 TO 20 CENTS OF EVERY INJURY CLAIM PAYMENT DOLLAR FOR AUTO ACCIDENTS CAN BE ATTRIBUTED TO FRAUD AND/OR CLAIM BUILDUP

## Supporters of HB86 ... Frivolous Lawsuit Bill

### Associations

AK Support Industry Alliance	Anchorage
National Federation of Independent Business	Juneau
Nat Assoc of Independent Insurers	Juneau
Alaska Restaurant & Beverage Association	Anchorage
Alaska State Chamber of Commerce	Juneau
Alaska Travel Industry Association	Anchorage
Alaska Hospitality Alliance	Anchorage
Southeast Conference	Juneau
Alaska Hotel & Motel Association	Anchorage
Alaska School Activities Association	Anchorage
Bed & Breakfast Association of Alaska – INNSide Passage Chapter	Southeast

### Individuals

Dan Kennedy	Kennedy & Co, CPA	Wasilla
Robert Mintz		Anchorage
Northern AK Tours	Matt Atkinson	Fairbanks
Frank Rose	Alaska Lodging Mgt.	Fairbanks
Justin Ripley	Alaska Travel Network	Anchorage
Thomas Ely	Sockeye Cycle	
Kirk Hoessle	Alaska Wildland Adventures	Girdwood
Kelly Bay	Wrangell Mountain Air	
Robert Dindinger	Alaska Travel Adventures	Juneau
Bob Didier	Silverbow Construction	Juneau
James Ingraham	Interior Medical Supply	Fairbanks
Ronald Aksamit	MBA Consulting Engineers	Anchorage
Charles Snyder	Sand Lake Automotive	Anchorage
Heidi Atkinson		Fairbanks
Neil MacKinnon	Hyak Mining	Juneau
Erika Weld	Dalton Highway Adventures	Fairbanks
Alice Orlich	Wiseman Museum	Wiseman
Lee Kenaston	Arctic Circle Trading Post	Fairbanks
Kathy Hedges		Fairbanks
Gregg MacDonald	Aurora Drilling	Fairbanks
10 Signatures	Jan's Distributing	Anchorage
Esther Alsworth	Alaskan Aircraft Engines	Anchorage
Russell Kegler	Perseverance Glass	Juneau
James Morgan	Sand Lake Automotive	Anchorage

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. HB86

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title False Claims and Improper Practice in Civil BRU Alaska Court System  
Cases Component Trial Courts  
 Sponsor Rep. Mulder  
 Requester House Judiciary Component No. 768

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	48.1	48.1	48.1	48.1	48.1	48.1
Travel						
Contractual						
Supplies						
Equipment	17.7	17.7	17.7	17.7	17.7	17.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	65.8	65.8	65.8	65.8	65.8	65.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time	4	4	4	4	4	4
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

See Attached Analysis

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
 Division: Alaska Court System Date/Time 4/6/01 12:20 PM  
 Approved by: Stephanie J. Cole Date \_\_\_\_\_  
 Agency: Administrative Director

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Alaska Court System  
 HB86 Fiscal Note Calculations

4/9/01

Superior Court:

FY02

50 Jurors 1.5 Days for Selection	1,875
14 Jurors for 4.5 Days of Court	1,575
12 Jurors for 1.0 Days of Deliberation	300
Deliberation Meal \$11/12 jurors + bailiff	143

Total per Superior Court Trial	3,893
Proposed # Superior Court Trials	4

Estimated Cost of Superior Court Trials	<u>15,572</u>
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District Court:

25 Jurors 1.0 Days for Selection	625
7 Jurors for 1.5 Days of Court	263
6 Jurors for .5 Days of Deliberation	75
Deliberation Meal \$11/6 jurors + bailiff	77

Total per District Court Trial	1,040
Proposed # District Court Trials	2

Estimated Cost of District Court Trials	<u>2,079</u>
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Total Juror Costs	<u>17,700</u>
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Superior Court Judge (3 months)	20,489
District Court Judge (2 months)	13,660
In-Court Clerk (2.5 months)	8,750
In-Court Clerk (1.5 months)	5,250

Court Personal Services	<u>48,149</u>
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48,100

Fiscal Note Total	65,800
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Alaska Court System  
Fiscal Analysis  
HB 86

House Bill 86 creates civil liability for actions that it describes as false claims and improper practice in civil cases. Section 1 of the bill essentially codifies Civil Rule 11, with three primary differences. First, CR 11 allows a judge to impose sanctions in a case in which improper practice took place, whereas HB 86 would authorize the aggrieved party to file a separate case before a separate judge, to be heard subsequent to the initial case. Any claim that the second case involved improper practice would result in a third case, and so on.

Second, by allowing a civil action for improper practice, HB 86 essentially makes financial sanctions (in the form of compensatory and/or punitive damages) for such behavior mandatory. This differs from CR 11, which gives the judge discretion in imposing sanctions (these might include financial sanctions, exclusion or admission of disputed evidence, extension or limitation of discovery, etc.). The federal courts began requiring mandatory sanctions for improper practice in 1983. This rule generated a dramatic increase in claims, and as a result, the federal courts repealed the requirement in 1993. Federal sanctions are once again discretionary.

Third, if a party makes a false statement of a material fact the trier of fact must enter judgment against that party on the issue to which the false statement relates. This differs from CR 11, which gives the judge discretion to dismiss a case or impose lesser sanctions if appropriate under the circumstances. As noted above, the federal experience suggests that mandatory sanctions actually increase caseloads.

While potentially beneficial for certain litigants, we believe that this legislation will result in a net increase in the number of cases before the courts. Had HB 86 been in effect in FY 00 it would have applied to over 8,000 civil cases in superior court, and roughly 15,000 civil cases in district court. If only 2.5 percent of those cases had resulted in a civil action for frivolous practice (either by the defendant or the plaintiff), there would have been roughly 575 new cases filed. If only 2.5 percent of those had resulted in a trial, there would have been 15 new trials. This note provides for the judicial time, clerical costs, and jury fees necessary to cover those additional trials.

This fiscal note does not take into account the additional motion practice that will occur in those new cases that are filed but settle prior to trial. It also does not reflect the additional time required to deal with motions filed in the underlying case that relate to having the trier of fact find that one party has made a false statement of material fact. Attorneys can be expected to be aggressive in their use of HB 86 as a new tool to pressure the opposing party into settling a case on their terms. More filings and more motion practice in existing cases will result in additional judicial time, as well as increased clerical costs.

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 86  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 4/10/01 4:53 PM Dept. Affected: Law  
Title "An Act relating to civil liability for certain false BRU Criminal Division; Civil Division  
or improper allegations in a civil pleading or ... " Component Criminal Justice Litigation;  
Sponsor Representative Mulder Special Litigation  
Requester House Judiciary Committee Component No. 2202;2213

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	100.8	100.8	100.8	100.8	100.8	100.8
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	43.6	43.6	43.6	43.6	43.6	43.6
Supplies	1.3	1.3	1.3	1.3	1.3	1.3
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>155.6</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	75.0	72.1	72.1	72.1	72.1	72.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	80.6	76.9	76.9	76.9	76.9	76.9
<b>TOTAL</b>	<b>155.6</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill creates three new causes of action stemming from conduct occurring in civil litigation. A party to a civil suit could bring a separate civil action against persons who (1) signed pleadings containing false allegations that are material to the claims asserted, with the intention of asserting false allegations, claims or defenses; (2) "initiated" or signed a pleading without making reasonable inquiry and forming a reasonable belief in the existence of the factual basis for a claim or defense and its validity under applicable law; or (3) participated as a party or representative of a party in the continuation of a claim or defense after the person discovers that the claim or defense is not "supported by a reasonable basis in fact" or "valid under applicable law." Potential defendants in the separate action are not limited to people who were parties to the original case, but include attorneys and others who participate as representatives of parties in the litigation of the original case. A civil suit under this bill could not be brought until after a final judgment was entered in the original case. In addition, other preconditions to a separate lawsuit are that the party bringing an action under this bill must have given notice to the opposing party of the allegedly improper conduct in the original case and that party must not have corrected the challenged conduct within 21 days of the notice. The bill does not require notice and opportunity to

Prepared by: Joan M. Kasson Phone 465-5370  
Division: Attorney General's Office Date/Time 4/10/01 4:53 PM  
Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 4/10/01  
Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. HB 86

ANALYSIS CONTINUATION

correct be given to non-parties, such as representatives of parties, even though they could be sued under this bill for having signed pleadings or participated in the original case. The party bringing the action under this bill must have prevailed on the claim or defense that was at issue in the notice given to the opposing party.

As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state or state employees that would have merit, but because it creates causes of action and remedies that do not presently exist. Although we do not anticipate having liability for the types of wrongdoing addressed by the bill, the department would incur increased litigation costs for defending cases brought under this bill. The reasons for these costs are:

1. The bill does not require that a party prevail on the original case as a whole in order to file a separate action under this bill; they need only prevail on a claim or defense that was raised in a notice to their opponent. So even if they win a battle, but lose the war, they may proceed to seek unrecovered damages, costs, and fees from their opponent and/or the opponent's lawyers;

2. There will likely be cases where the determination of who prevailed on an issue may not be clear-cut (such as where there is an allocation of fault to both plaintiff and defendant) which will require litigating if a second action is brought;

3. Even where a party has not met the preconditions to filing an action under this bill, if a separate action is brought, time and effort will be needed to demonstrate that the party is not entitled to proceed; and

4. Under subsection (a)(3), the winner in the original action can sue the loser (and that party's representatives and lawyers) for damages or costs not recovered in the first case if they claim that the loser's claim or defense was not supported by "reasonable basis in fact" or "valid applicable law." This is presumed to be a different standard than is used in subsection (a)(2) where a party has filed pleadings without making reasonable inquiry and forming a reasonable belief regarding the facts and law underlying a claim or defense. The standard for potential liability under (a)(3) appears to be much broader, and could essentially result in examination of the legal strategy and conduct of the original action, if not relitigation of the underlying issues to determine whether the loser (or the loser's representatives or lawyers) had a reasonable basis in fact or valid applicable law to support their claims or defenses. Expert witnesses may well be needed to address these issues. Factual disputes will prevent cases from being resolved on motion practice.

5. The potential for conflicts arising between losing parties and their own lawyers when they are sued in an action under this bill will likely result in the need for multiple attorneys to represent them.

The bill will provide a vehicle for parties who are not satisfied with the outcome of a case to further pursue their opponent's lawyers and other representatives to "make them whole." Some may view HB 86 actions as a means to extract additional monies through settlement from different opponents. The bill's full fee provision may not be effective due to the failure to include a court rule amendment provision in the bill. The threat of having to pay a small percentage of an opponent's fees will not prevent all questionable litigation from being brought under this bill, particularly by pro se litigants and others who are judgment-proof.

Overall, the department estimates that HB 86 would result in increased litigation defense costs. We anticipate an increase of approximately 1090 hours of attorney time (three-quarters of a full-time equivalent attorney position) in the civil division, and an estimated 120 hours of attorney time in the criminal division. This is based on an estimated 10-15 actions, of varying complexity, being handled by the civil division (compared to over 2,200 general litigation and tort litigation files open at any given time), and 3-4 actions disposed of by motion defended by the criminal division.

This estimate is conservative. In order to defend these lawsuits, the department's attorneys will not be able to simply rely on work already completed in the course of the underlying case. New discovery and proof will be required to show what the lawyers and their clients knew, when they knew it, and whether it amounted to a reasonable factual basis for a claim, or whether the claim was supported by valid applicable law.

The department's FY02 weighted cost for an attorney position is \$97.57 per hour. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel, or one time new equipment purchases. The projected in-house staff cost would be \$106,332 for the civil division, plus \$6,500 in FY02 only for new equipment, (43.59% GF and 56.41% IAR) and \$11,708 in general funds for the criminal division. \$5,000 will be needed by the civil division for direct case costs (43.59% GF and 56.41% IAR), and \$1,000 for the criminal division. Additionally, due to conflicts, \$25,000 in outside counsel costs will probably be incurred by the civil division (43.59% GF and 56.41% IAR). No outside counsel costs are anticipated for the criminal division. Component line item detail follows:

	<u>Special Litigation</u>	<u>Criminal Justice Litigation</u>	<u>Total</u>
100	90.8	10.0	100.8
200	2.8	0.5	3.3
300	41.5	2.0	43.6
400	1.2	0.1	1.3
500	6.5		6.5
Total	142.9	12.7	155.6



**ALM** Alaska Lodging Management, Inc.

P.O. Box 72478  
Fairbanks, Alaska 99707-2478  
250 Cushman St., Suite 4C  
Phone 907-474-8555  
Fax 907-474-8557  
Email: [aklm@polarnet.com](mailto:aklm@polarnet.com)

**FEB 22 2001**

February 19, 2001

Representative Norman Rokeberg  
Capitol Building  
Juneau, AK 99801

Honorable

I want to express my support for passage of HB86--- commonly known as the "frivolous lawsuit" bill. My review of the provisions of this bill leads me to conclude that this is a common sense approach to a lawsuit. It seems only reasonable that parties to a lawsuit should assure that a claim or defense is based in fact and is valid under applicable law. Additional, it is difficult for me to argue that if a party makes an intentional and false statement of material fact, that they should lose on that claim. How could a court sanction a process that would not encourage truthfulness throughout the process? It appears to me that the bill is balanced with regard to the stipulations of the bill applying to both the plaintiff and the defendant.

I encourage you to do whatever is in your power to assure that this bill passes.

Yours sincerely,

Frank W. Rose  
President  
Alaska Lodging Mgt., Inc.

**TRIPLETTE CONSTRUCTION, INC.**

PO BOX 610 JUNEAU, AK 99802  
PHONE 907 586-2705 FAX 907 586-2918

APR 10 2001

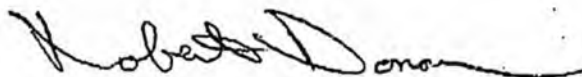
April 10, 2001

To Whom it may concern;

We are in support of **HB 86 THE FRIVOLOUS LAWSUIT PROTECTION ACT.** It is about time for such a bill to be passed, and made law.

Sincerely,

TRIPLETTE CONSTRUCTION,



Robert Donovan  
Executive Supervisor

cc. File.  
rd



**HECTOR'S WELDING, INC.**

2473 OLD RICHARDSON HWY.  
NORTH POLE, ALASKA 99705  
PHONE (907) 488-6432  
FAX: (907) 488-8385

Date 4/10/01

Page 1 of 1

TO: Representative  
Norman Rokberg -

FAX# 907-465-2050

PHONE# - -

ATTN: \_\_\_\_\_

RE: House Bill #86

MESSAGE: \_\_\_\_\_

We as small business owners urge  
your support for passage of this  
bill. It is hard enough to fight lawsuits  
that are just we don't need to be  
bogged down with untruths.

Jeanette Thurnault  
Sec. Gen.  
N.F.T.B. member.

# FAX TRANSMISSION

**RIEHL SEW N VAC, INC.**

601 W 36TH AVE, STE 18

ANCHORAGE, AK 99503

907-563-2909

FAX: 907-563-1076

**To:** REP. NORMAN ROKEBERG      **Date:** April 10, 2001  
**Fax #:** 1-907-465-2040      **Pages:** ONE (1), including this cover sheet.  
**From:** E. A. HAMM JR.  
**Subject:** HB 66

**COMMENTS:**

I, PERSONALLY, AS WELL AS OUR FIRM, ENDORSE PASSAGE OF HB 66-

THE FRIVOLOUS LAWSUIT PROTECTION ACT

FURTHER SUGGESTION: PARTIES BRINGING SUIT SHOULD BE REQUIRED TO POST A SURETY BOND EQUAL TO THE COST OF DEFENDING AGAINST SUITS FOUND TO BE WITHOUT STANDING OR MERIT.

YOURS TRULY, E A HAMM JR

COPY TO: ELDON MULDER

COPY TO: NFIB/ALASKA STATE OFFICE

**Subject:** HB-86

**Date:** Mon, 09 Apr 2001 16:10:34 -0800


**From:** brown <kyle@aes.alaska.com>

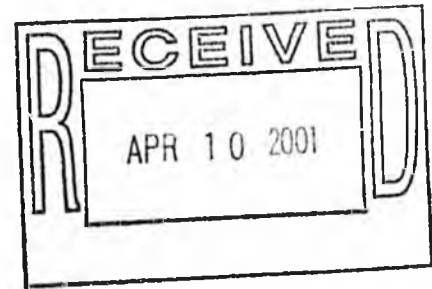
**To:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**CC:** Representative Scott Ogan <Representative\_Scott\_Ogan@legis.state.ak.us>,  
Representative John Coghill <Representative\_John\_Coghill@legis.state.ak.us>,  
Representative Jeannette James <Representative\_Jeannette\_James@legis.state.ak.us>,  
Representative Kevin Meyer <Representative\_Kevin\_Meyer@legis.state.ak.us>,  
Representative Ethan Berkowitz <Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
Representative Al Kookesh <Representative\_Al\_Kookesh@legis.state.ak.us>,  
Representative Eldon Mulder <Representative\_Eldon\_Mulder@legis.state.ak.us>

Dear Committee Members,  
Please accept my thoughts on support for this bill. Thank you,  
Kyle Brown - Discovery Drilling, Inc.

---

 GovltrHB86.DOC	<b>Name:</b> GovltrHB86.DOC <b>Type:</b> Microsoft Word Document (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message
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Discovery Drilling, Inc.  
P.O. Box 111165  
Anchorage, Alaska 99511-1165

April 9, 2001

House Judiciary Committee Members and Sponsor of HB 86  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB 86 – The Frivolous Lawsuit Protection Act

Dear Committee Members;

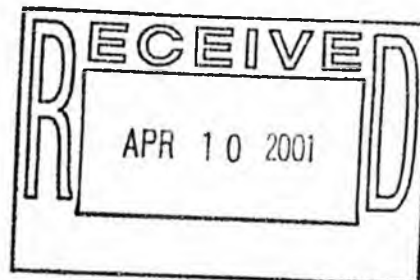
Discovery Drilling Inc. and it's employees wish to lend support to this important legislation in the strongest terms!! We have been conceptually in favor of something like this for a long time. I personally just spent almost 2 years of total time, including the last 6 weeks in superior court defending my company against a frivolous lawsuit.

Without going into detail, this case cost all the parties involved nearly 1 million dollars and was based on 1 persons fabrications. The net result was a jury that saw through the story and awarded the fellow \$ 0.00. What an incredible waste of time, money, jurors time and a big cork for the court system.

Unless there is something like this bill to create some accountability to such individuals, this sort of activity will not stop. I don't know what the actual content of the bill is, but typically the plaintiffs in these actions have no money to recover, so I feel it is essential that the attorneys filing these claims have some responsibility for making sure that they present truthful information. Thank you for your time and attention to this matter.

Sincerely,

Kyle Brown  
President



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FOLLOWING  
DOCUMENT(S)  
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POOR  
ORIGINAL  
COPIES

# AURORA ELECTRIC DATATEL

APR 09 2001

April 9, 2001

Representative Norman Rokeberg  
Chairman

Re: House Bill 86

Dear Mr. Rokeberg,

As one of the largest electrical contractors of Alaska, Aurora Electric/DataTel would like to go on record as being in favor of House Bill 86 which will help prevent frivolous lawsuits by requiring parties to the lawsuit and their attorneys to be truthful and responsible in their pleadings. Making a person liable for false allegations or material misstatements of fact in civil matters will certainly curb many lighthearted or unmerited lawsuits.

We certainly appreciate your help in getting this legislation passed, it is long overdue, and I know we can count on you. Thank you for your attention regarding this matter.

Respectfully;

Clark L. Smith  
Business Development  
Aurora Electric/DataTel  
1118 E 70<sup>th</sup> Avenue  
Anchorage, Alaska 99518  
(907) 868-2239

APR 09 2001



MEMORANDUM

TO: NFIB/Alaska State Office Facsimile N<sup>o</sup>: 907/463-5128  
 FROM: Vernon Brown, General Manager  
 DATE: April 9, 2001

April 9, 2001

**Alaska Mechanical, Inc. a member of the National Federation of Independent Business, is in favor of passing HP 86 - The Frivolous Lawsuit Protection Act.**

House Judiciary Committee Members	Fax N <sup>o</sup>
Representative Norman Rokeberg, Chairman	465-2040
Representative Scott Ogan	465-3265
Representative John Coghill	465-3258
Representative Jeannette James	465-2381
Representative Kevin Meyer	465-3476
Representative Ethan Berkowitz	465-2137
Representative Al Kookesh	465-2827

Sincerely,

ALASKA MECHANICAL, INC.

Vernon Brown  
General Manager

cc: Representative Eldon Mulder 465-3518

**ALASKA MECHANICAL INC.**

MAIL - P.O. BOX 203649, ANCHORAGE, ALASKA 99520 ■ PHONE - (907) 349-8502 ■ FAX (907) 349-1324  
 MAIN OFFICE - 8540 DIMOND "D" CIRCLE, ANCHORAGE, ALASKA 99515



**RICHARD STANTON CONSTRUCTION, INC.**  
1006 Smythe St. Fairbanks, Alaska 99701-4128  
Tel: (907) 451-7437 Fax: (907) 451-9439

**FAX TRANSMISSION COVER SHEET**

---

Date: Monday, April 9, 2001

Time:

To: Representative

Phone:

Fax:

Re: HB 86

From: Rod Stanton

---

*YOU SHOULD RECEIVE 1 PAGE(S), INCLUDING THIS COVER SHEET.  
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (907) 451-7437.*

---

It is unfortunate that we must legislate against intentional false statements by persons, entities and their attorneys. However, right and truth are often pushed aside by less noble motives. Therefore, please support efforts to enforce truthfulness in court proceedings.



**RANDALL MOSS INSURANCE, INC.**

2980 C ST., SUITE 200 • ANCHORAGE, AK 99503 • (907) 562-8224 FAX (907) 561-2963

Auto • Home • Life • Annuities • Mutual Funds

April 9, 2001

House Judiciary Committee Members  
Representative Norman Rokeberg, Chairman  
Juneau, Alaska

Dear Mr. Rokeberg:

Re: HB 86  
Frivolous Lawsuit Protection Act

Just a note of support for this very important legislation facing the House Judiciary Committee.

A litigious society is unhealthy for Alaska.

Sincerely,

Randall H. Moss  
Owner/Randall Moss Insurance

RHM:tlp

# BUDGET RUBBER STAMPS

&

## ENGRAVING

Ph: 907.278.2677

Fax: 907.278.2678

To: Rep. Norman Rokegerg, Chairman

Date: April 9, 2001

From: Budget Rubber Stamps & Engraving

Account #

Subject: HB 86 - Frivolous Lawsuit Protection Act

Copy to: Rep. Eldon Mulder

NFIB

APR 09 2001

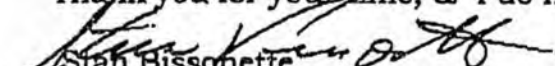
Representative Norman Rokeberg, Chairman

I am asking you to please vote for Rep. Eldon Mulders house bill #86 to prevent the frivolous law suits. To be heard in the house Judiciary Committee on Wednesday, April 11 at 1:00 pm.

I am a member of the NFIB & I do watch very close as to how our Representatives vote.

I am a 50 + year resident of our wonderful state & I do vote & encourage everyone else to vote.

Thank you for your time, & I do hope you will help us in this important vote.

  
Stan Bissonette  
Owner / Operator

# All Creatures Veterinary Clinic, Inc.

Mile 7.4, Palmer-Wasilla Highway  
4360 Snider Drive, Wasilla, Alaska 99654

(907) 376-7930  
Fax (907) 376-7931



April 9, 2001

Rep. Norman Rokeberg, Chairman  
House Judiciary Committee  
State of Alaska

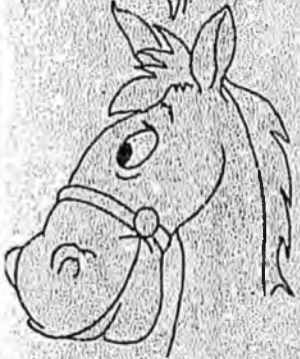
Dear Rep. Rokeberg,

I would like to go on record in support of House Bill 86 regarding frivolous lawsuits. I feel this an important and long overdue bill that will protect people from lawsuits due to false allegations. I am a member of NFIB.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joanne G. Rehn".

Dr. Joanne G. Rehn



# L&B Color Printing

590 E. Railroad Avenue, Wasilla, Alaska 99654  
(907) 376-2081 • Fax: (907) 373-3000

APR 09 2001

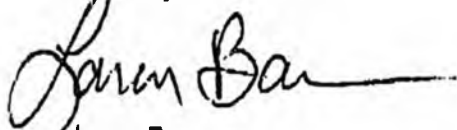
April 9, 2001

Representative Norman Rokeberg

Dear Representative Rokeberg,

I wish for you to consider House Bill 86. I find this a good lawsuit protection for truth to be brought forth.

Sincerely,



Lavon Barve  
Owner

## NORTHWEST AUTO PARTS

5700 Camelot Drive  
Anchorage, Alaska 99504  
Phone 333-8531

APR 09 2001

April 9, 2001

State of Alaska  
House of Representatives  
House Judiciary Committee  
Norman Rokeberg, Chairman

Ref. - House Bill 86.

Dear Representative Rokeberg:

Having been made aware of HB 86 by the NFIB, I am writing in support of the bill which is scheduled for hearing on April 11, 2001. I feel this legislation is long overdue and would be a positive step toward insuring that only responsible civil actions are brought before our state judicial system for a fair judgment. Those who wish to abuse the system should be held accountable for their actions. The court system being public domain, deserves the respect its limited but necessary resources have available. Secondly, those individuals wronged by knowingly false accusations in a civil suit deserve compensation for the damages such a suit can cause.

Thank you in advance for your consideration of these comments.

Sincerely,




Chuck Ossenkop, President  
Ossenkop Enterprises Inc. dba Northwest Auto Parts

# BERG DEVELOPMENT INC.

APR 09 2001

TO: Representative Norman Rokeberg, Chairman  
State of Alaska  
House Judiciary Committee

FROM: Arnie Berg, General Manager 

DATE: April 9, 2001

REF: HB 86 - THE FRIVOLOUS LAWSUIT PROTECTION ACT

Our firm is fully in support of this legislation. It will have a positive impact on the judicial system. We respectfully request that you support the legislation.

Berg Development Inc. is an NFIB member.

Thank you for your consideration in this matter.

MSC 171, PO. Box 875910, Wasilla, Alaska 99687-5910  
Phone: (907) 376-7505 Fax: (907) 376-7506



APR 09 2001

April 9, 2001

To Whom It May Concern,

My name is Dave Mabeus, I am the owner of Signco Quality Signs, Inc. and I am a member of the NFIB.

This letter is to inform you of my support for House Bill 86, the way I see it, if passed it would save business owners a lot of valuable time not having to fight bogus lawsuits.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Mabeus", is written over the word "Sincerely,". The signature is stylized and cursive.

Dave Mabeus

---

DESIGN • CUSTOM FABRICATION • INSTALLATION • SERVICE • NEON  
2840-A Commercial Drive—Anchorage, Alaska 99501—(907) 338-7446 FAX (907) 258-7192

## Cordova Airporter

201 Industry Rd. • P.O. Box 338  
Cordova, AK 99574  
(907)424-3286  
Fax (907)424-3287

APR 09 2001

Representative Norman Rokeberg, Chairman  
House Judiciary Committee  
Juneau AK


cc: Rep. Scott Ogan  
Rep. John Coghill  
Rep. Jeannette James  
Rep. Kevin Meyer  
Rep. Ethan Berkowitz  
Rep. Al Kookesh

Re: HB 66

As a member of the National Federation of Independent Business persons I strongly urge you to vote for HB 66. There are so many frivolous lawsuits plugging up our court systems, it is time to do something about them.

Thank you.

Joy Rawlins, owner



Cordova Airporter

APR 05 2001

# FAX COVER

**Message:**

Date : 4/5/01

**HB 86**, introduced by Representative Eldon Mulder, will help prevent frivolous lawsuits by requiring parties to the lawsuit and their attorneys to be truthful and responsible in their pleadings.

This Bill would make a person liable for false allegations or material misstatements of fact in a civil action. If a person is found to have intentionally made a false statement of a material fact, then the injured party may bring an action for damages. However, if honest errors are made, there will be no sanctions.

I urge your support for this worthwhile legislation.

PeggyAnn McConnochie, President and Broker  
ACH, INC.

(ALASKA COASTAL HOMES, INC.)

E-mail: peggyann@gci.net; peggyann@achconsulting.com

Web Site: www.achconsulting.com

To: Representative Norm Rokeberg

From : PeggyAnn McConnochie

Company :

Company : ach, inc. (alaska coastal homes, inc.)

Fax Number : 4652040

Fax Number : (907) 586-4491

Pages including this cover page: 1

Subject : HB 86



WORLD WIDE MOVERS, INC.

APR 11 2001

April 10, 2001

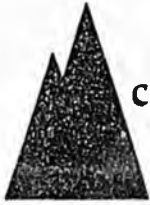
To: NFIB/Alaska State Office

From: Peter Sorenson, President, World Wide Movers Inc.

Subject: HB 86-The Frivolous Lawsuit Protection Act

As a member of the NFIB, I would like to voice my support for HB 86. We appreciate the hard work and the time that the legislators put into every session.

*Peter Sorenson*  
Peter W. Sorenson  
President



**CITY/BOROUGH OF JUNEAU**  
**ALASKA'S CAPITAL CITY**

**APR 17 2001**

**OFFICE OF THE MANAGER**

Telephone: (907) 586-5240; Fax: (907) 586-5385

Dave Palmer@ci.juneau.ak.us

April 11, 2001

The Honorable Eldon Mulder  
State of Alaska Representative  
State Capitol, Room 507  
Juneau, AK 99801-1182

Re: House Bill 86 (HB 86)

Dear Representative <sup>ELDON</sup> Mulder:

Thanks to you and Representative Rokeberg for sponsoring HB 86. The City and Borough of Juneau (CBJ) responds to numerous complaints from plaintiffs in the course of events.

I believe that local government must accept responsibility when a loss or injury occurs that is truly the government's fault and responsibility. However, experience leads me to believe that it is accepted procedure in some legal practices to simply "shotgun" a complaint against a defendant in hopes that some of the allegations will, at a later date, be supported. After discovery, depositions, and an analysis of fact, a large share of the allegations made in an initial complaint are often not supported by fact, or even by a thread of evidence. Nevertheless, we are compelled to research and respond to every allegation, a costly time consuming process.

We have had complaints suggesting the anatomically impossible (plaintiff hit her uterus with her knee in a fall); the factually unsupported (plaintiff claimed lost wages when evidence showed no interruption in normal work hours or pay); and one that alleged our EMTs improperly failed to force the plaintiff to go to the hospital after a minor traffic accident even though the plaintiff signed a waiver and refused treatment.

I guess we are not alone, as evidenced by your introduction of HB 86.

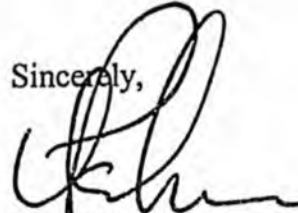
CBJ, like most large institutions, attracts its share of crank lawsuits filed by pro se plaintiffs who seek to collect damages or enjoin government action based on obscure English common law principles, inapplicable statutes, alleged conspiracies, or other theories completely devoid of

Representative Mulder - HB 86  
April 11, 2001  
Page 2

merit. Courts and defendants have little choice but to take these plaintiffs seriously. If the plaintiff who looks like a crank actually turns out to be a crank, there should be some way to put the issue to rest early on. If the complaint is drafted by knowledgeable counsel, it is only fair to expect complaints to be written with a modicum of accuracy and veracity.

I encourage support of HB 86, and appreciate your efforts. Thank you.

Sincerely,



David R. Palmer  
City & Borough Manager

cc: Senator Kim Elton  
Representative Rokeberg  
Mayor Sally Smith  
Clark Gruening  
Kevin Ritchie, AML

Discovery Drilling, Inc.  
P.O. Box 111165  
Anchorage, Alaska 99511-1165

APR 12 2001

April 9, 2001

House Judiciary Committee Members and Sponsor of HB 86  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB 86 - The Frivolous Lawsuit Protection Act

Dear Committee Members;

Discovery Drilling Inc. and it's employees wish to lend support to this important legislation in the strongest terms!! We have been conceptually in favor of something like this for a long time. I personally just spent almost 2 years of total time, including the last 6 weeks in superior court defending my company against a frivolous lawsuit.

Without going into detail, this case cost all the parties involved nearly 1 million dollars and was based on 1 persons fabrications. The net result was a jury that saw through the story and awarded the fellow \$ 0.00. What an incredible waste of time, money, jurors time and a big cork for the court system.

Unless there is something like this bill to create some accountability to such individuals, this sort of activity will not stop. I don't know what the actual content of the bill is, but typically the plaintiffs in these actions have no money to recover, so I feel it is essential that the attorneys filing these claims have some responsibility for making sure that they present truthful information. Thank you for your time and attention to this matter.

Sincerely,

Kyle Brown  
President

FYI  
Eldon

# BANKSTON & MCCOLLUM

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
ROBERT B. ATWOOD BUILDING  
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ANCHORAGE, ALASKA 99501  
(907) 276-1711  
FACSIMILE (907) 279-5358  
[www.bankston.to](http://www.bankston.to)

FEB 09 2001

WILLIAM M. BANKSTON  
MARK W. FULLMER  
JON T. GIVENS  
CHRIS D. GRONNING  
CHRISTOPHER J. HEAPHEY  
JAMES H. MCCOLLUM  
CHERYL L. MCKAY  
MICHAEL R. MILLS  
STEVEN T. O'HARA  
JOHN M. SEDOR  
THOMAS V. WANG, JR.

February 7, 2001

Representative Norm Rokeberg  
House of Representatives  
State Capitol Building, Room 118  
Juneau, Alaska 99801-1182

Re: House Bill No. 86

Dear Representative Rokeberg:

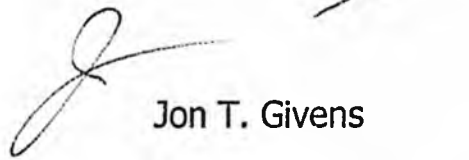
Enclosed please find a copy of a letter from Randall J. Weddle of the law firm of Holmes Weddle & Barcott. He has previously written you to criticize House Bill 42. I concur with all of his comments. I am an attorney who represents a wide variety of clients, including real estate agents, real estate developers, construction companies, insurance companies, insurance brokers, and numerous business interests too numerous to mention. All of my practice is dedicated to litigation. The proposed legislation in House Bill 42 will create a boondoggle of litigation and lawsuits. I believe this legislation is doomed to create a massive boomerang effect from what it was truly intended to do. Any time any party has any belief that there has been any level of false statement regarding a claim or defense, whether ranging from an innocent typographical error to an egregious perjury, we will see a flood of lawsuits and motions filed by the parties in the litigation. Take, for example, the scenario where a party being sued falsely states something occurred on a Tuesday, when it really occurred on a Monday, now a perfectly legitimate defense or claim of that party is in jeopardy over something that really does not matter because lawyers can argue "all day long" over whether something is "material." The court system presently has the ability to strike claims or defenses as sanctions for improper conduct, and that is sufficient. It is quite often the case in litigation that one side or the other contends one side or the other is lying, and, on many occasions, both sides

Representative Norm Rokeberg  
House of Representatives  
February 7, 2001  
Page 2

contend the other side is lying. Thus, the proposed legislation will only create an endless string of additional costly motions and additional costly lawsuits.

Very truly yours,

BANKSTON & McCOLLUM, P.C.

A handwritten signature in black ink, appearing to read "Jon T. Givens", with a long horizontal flourish extending to the right.

Jon T. Givens

JTG/ds  
Enclosure  
JTG\LTRokebergjtg1

LAW OFFICES OF  
**HOLMES WEDDLE & BARCOTT**  
A PROFESSIONAL CORPORATION

701 WEST EIGHTH AVENUE, SUITE 700 · ANCHORAGE, ALASKA 99501-3408  
TELEPHONE (907) 274-0666 · FAX (907) 277-4657

April 25, 2000

**VIA FACSIMILE: (907) 465-3922**  
**and U.S. MAIL**

Senator Robin Taylor  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska 99801-1182

Re: House Bill No. 42

Dear Senator Taylor:

I am writing to express my concern about House Bill No. 42. While the authors undoubtedly have legitimate concerns about the importance of truthful testimony in judicial proceedings, I believe the Bill will result in unintended ramifications which, if understood by the Legislature, should lead to the Bill's defeat. I write from the perspective of an attorney who routinely represents defendants in personal injury litigation. Please consider the following:

1. We already have civil and criminal sanctions for lying under oath. Also, Civil Rule 82(b)(3) provides the court with the power to sanction parties who pursue unreasonable or vexatious claims.
2. The Bill has the potential for creating mini-lawsuits within lawsuits, with each party accusing the other of making false claims and asking the jury to make special findings in that regard. Such claims will likely cause insurers to "reserve rights," thus giving rise to a need for the insured to hire private counsel, and possibly forcing the insurance company to give up control of the litigation under the terms of AS 21.89.100.
3. Attorneys will be discouraged from vigorously representing their client's interests if they face exposure to punitive damages in a suit by the party opposing their client's claims.
4. While the goal of tort reform was to limit a flood of lawsuits, this Bill will have the opposite effect. A party who wins a lawsuit will have a great incentive to bring a second suit, alleging that the unsuccessful party pursued frivolous and/or misleading defenses. This is especially true if the unsuccessful litigant is a "deep pocket" defendant.

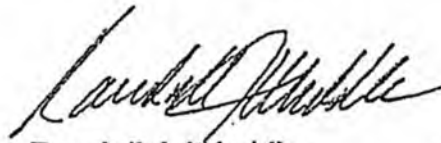
Senator Robin Taylor  
April 25, 2000  
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Because of the threat of punitive damages, which are based in part upon the wealth of the defendant, the Bill creates a "blackmail" situation in which the defendant, who likely will not be covered by insurance in the second suit, may be forced to settle even though a claim in the second trial is without merit.

I am sure that some will respond to comments such as mine by saying that if there are no false statements, there is nothing to fear. As an attorney, I am sure that you recognize the problem with such a view. A person who has lost the first trial and is then faced with a second one, based upon alleged frivolous defenses in the first case, will have to seriously consider settlement of even meritless claims when faced with a potential punitive damages award, based upon the defendant's wealth, especially when insurance will probably not provide any protection.

Thank you for considering these thoughts.

Very truly,



Randall J. Weddle

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commentary

Lie-tery Winners

Who wouldn't lie to win the lottery? This is what happens in court all the time.

Michael Jones  
 The National Law Journal  
 March 22, 2001



Lying in lawsuits is widespread. Just ask anyone who has taken more than a handful of depositions or cross-examined witnesses at trial -- especially witnesses in tort cases.

Over the years, some very decent people have shaken my hand, smiled in my face and then lied to me -- under oath. At first I was offended. Then I came to expect it. But now I think something needs to be done about it because the oath has become virtually meaningless.

Lawsuits often generate what I call lottery lies. Who wouldn't lie in order to win the lottery? Imagine a lottery system in which there was no single winning ticket, but rather an indefinite number of winning tickets. Imagine a system in which a lotto prize was given to anyone who swore under oath that he or she had a winning ticket without any need to present a ticket in order to collect. In a system like this, many good people would lie to win the lottery. The oath would be no obstacle at all.

Truth to tell ...

This is what happens in court all the time. One witness in a recent case that I tried claimed that she could remember what was written on a can that she saw some 50 years ago -- when she was 3 years old and could not even read. Another witness (in a different case) swore in one deposition that he drove a certain truck every day, but then later swore that he only drove it once;

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he initially admitted that he was not wearing his seatbelt but later swore that he was. All of these witnesses were trying to win the lawsuit lottery, either for themselves or for someone else.

The following examples are a clear illustration of my point:

- The grandmother: She came to court in a wheelchair, injured, she claimed, because of a brake failure.

Not so, I laid out in my opening statement. "This is a case about the fulfillment of a medical prophecy," I argued. The medical prophecy was the statement made by a doctor long before the accident that the plaintiff's medical problems (and they were many) would get worse over time. The real cause of the accident, I told the jury, was the plaintiff. I pointed out all of the different medications that she was taking and their side effects. I also noted that many cautioned against driving while taking the medication.

This grandmother's lottery moment came when she was questioned by her lawyer. She denied taking any medication at all on the morning of the accident. I could not believe what I was hearing. If the jury believed her testimony, she was well on her way to winning her lawsuit. The problem for her was that her medical records made clear that her condition was such that she could not have gotten out of the house without her medication because she had so many ailments.

As I cross-examined her, this grandmother admitted that she could not even remember what medication she had taken just hours before coming to court, to say nothing of remembering what she had taken on the day of the accident, some years earlier. Her lottery lie did not work. The jury returned a verdict against the plaintiff.

- The former police officer: This former officer's lawsuit claimed that the door on his truck was defectively designed and had come open during an accident. His expert witness admitted that at some point after the truck was manufactured someone had modified the door, and thereafter it had been poorly maintained. The plaintiff's expert also testified that the driver's door had been in this sorry condition for a long time. It was so bad that the door would not fully close -- to close it at all, it needed to be physically lifted up and shoved. This expert agreed that this condition would have been obvious to the plaintiff long before the accident.

#### **HOPES AND DREAMS**

For his part, the plaintiff had been heard bragging around town as to how much

money he was going to get from his lawsuit. His deposition testimony presented his lottery moment. He swore that his own expert was dead wrong; that the door had been in perfect condition before the accident. He never so much as heard a rattle and had no problems with the door at all before the accident. No problem opening it, no problem closing it. I have no doubt that he would have stuck to this story at trial even after we presented our trump cards -- witnesses who had seen him get in the vehicle through the passenger door, because the driver's door (the one at issue), did not work properly. That dramatic moment never came because the court dismissed the case.

- **Strictly business:** In this case, it was not the plaintiff but her supporting witness who lied. The issue was whether the plaintiff was wearing her seatbelt during an accident while the two were on a supposed business trip. Records showed that the two had checked into a one-bedroom condo as "Mr. and Mrs." Eyewitnesses described them as acting like a loving, affectionate couple. The plaintiff's husband testified that after the accident this witness told him that he loved the plaintiff (the witness's wife) and would take care of her.

At the deposition, this witness proved to have an iron chin. We hit him with the husband's statement. Never happened, he testified. We hit him with the condo registration card, showing "Mr. and Mrs." Never happened, he testified. We hit him with hotel and credit card receipts showing that he and the plaintiff had traveled together on numerous occasions, taking the same flights and staying in the same hotels. He dismissed these records as mere coincidences. He swore that he never saw the plaintiff on the flights or at the hotels reflected in the credit card receipts.

All of these witnesses were decent people. I have no great desire to see them jailed or even fined for committing perjury. But we must do something to combat the notion that a lottery lie under oath is not really a lie.

*Michael Jones is a partner at Washington, D.C.'s Kirkland & Ellis.*

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